

DRAFT UNAPPROVED

**VIRGINIA BOARD OF PHYSICAL THERAPY
FORMAL HEARING MINUTES**

Friday, July, 10, 2009

**Department of Health Professions
Perimeter Center
9960 Mayland Drive, Suite #300**

Henrico, Virginia

CALL TO ORDER: A panel of the Board was called to order at 1:07 p.m.

MEMBERS PRESENT: George Maihafer, PhD, PT., Chair
Maureen Lyons, PT, Vice Chair
Damien Howell, PT
Peggy Belmont, PT
Lorraine Quinn, PTA
JR Locke, Citizen Member

BOARD COUNSEL: Amy Marschean, Sr. Assistant Attorney General

STAFF PRESENT: Lisa R. Hahn., Executive Director for the Board
Kathy Truesdale, Compliance Case Manager
Missy Currier, Administrative Assistant
Holly Manke, Administrative Assistant

**PARTIES ON BEHALF OF
COMMONWEALTH:** William Clay Garrett, Assistant Attorney General
Tammie Jones, Adjudication Specialist

**COMMONWEALTH
WITNESSES:** James Wall, Senior Investigator, DHP
Jennifer Baker, Regional Enforcement Manager, DHP
Patient A
Patient B
Patient D
Bob Suddarth
Deborah Dworschak, LPTA
Amy Phillippi, LPTA

**RESPONDENT'S
COUNSEL:** Gerald C. Canaan, II, Esq.
Donna Lett, Paralegal

**RESPONDENT'S
WITNESSES:** Judy Harrell
Fred Dean
Sam Wehby

COURT REPORTER: Melissa Custis, Court Reporter, Capitol Reporting

MATTER SCHEDULED: **Walter M. Ward, P.T.** **License No.: 2305-006157**
Case No.: 124833

PRELIMINARY MATTERS: 1) Mr. Garrett entered the Commonwealth's Exhibits 1-3.

RULING: Hearing no objections from Mr. Canaan on behalf of Mr. Ward, the exhibits were so marked and admitted into evidence by the Chair.

2) Ms. Marschean entered Pre-Hearing Motion material for the record.

3) Mr. Canaan introduced a corrected document replacing Exhibit C of the Respondent's Exhibits.

RULING: Hearing no objections from Mr. Garrett on behalf of the Commonwealth, the motions and exhibits were so marked and admitted into evidence by the Chair.

4) Mr. Canaan provided the Respondent's Exhibits A-H.

Mr. Garrett, on behalf of the Commonwealth, renewed his Pre-hearing *Motion to Strike* Respondent's Exhibit D, stating the exhibit should be excluded as it lacked credibility and merit.

RULING: The Chair again overruled Mr. Garrett's objection, so marked the exhibits and admitted the Respondent's Exhibits A-H into evidence.

5) Mr. Garrett asked that Patient C's written evidence be used as her testimony. Mr. Garrett stated Patient C was willing and able to come to the hearing, however within the last 24 hours has been admitted to the hospital.

Mr. Canaan objected to the Commonwealth's request to allow Patient C's written evidence to serve as her testimony.

RULING: The Chair ruled to defer the decision to the closing of the Commonwealth's case.

DISCUSSION: Mr. Ward appeared before the Board in person in accordance with a Notice of the Board dated May 11, 2009. Mr. Ward was represented by Gerald C. Canaan, II, Esq.

The Board received evidence and sworn testimony from Mr. Ward and witnesses called to testify.

CLOSED SESSION:

Upon a motion by Maureen Lyons, and duly seconded by Damien Howell, the Board voted to convene a closed meeting pursuant to §2.2-3711.(a)(7) of the Code of Virginia, for consultation with legal counsel pertaining to actual or probable litigation. Additionally, she moved that Ms. Marschean, Ms. Hahn, Ms. Truesdale and Ms. Currier attend the closed meeting because their presence in the closed meeting was deemed necessary and would aid the Board in its deliberations.

RULING:

Having certified that the matters discussed in the preceding closed session met the requirements of §2.2-3712 of the Code, the Board re-convened in open session and announced its decision.

DECISION:

Upon a motion by Damien Howell and duly seconded by Lorraine Quinn, the Board unanimously voted to deny the Respondent's *Motion to Strike* the allegation that the Respondent had violated facility protocol.

Upon a motion by Maureen Lyons and duly seconded by Damien Howell, the Board unanimously voted to grant the Respondent's *Motion to Strike* allegations relative to Patient C, but they would consider Patient C's complaint as one of four similar complaints and give it whatever weight the Board deems appropriate.

Mr. Canaan on behalf of Mr. Ward, objected to the Board's ruling to allow Patient C's written complaint.

DISCUSSION:

The formal hearing continued and Mr. Canaan began his case presentation by calling witnesses, including Mr. Ward, to testify.

CLOSED SESSION:

Upon a motion by Maureen Lyons, and duly seconded by Damien Howell, the Board voted to convene a closed meeting pursuant to §2.2-3711.A(27) of the Code of Virginia, for the purpose of deliberation to reach a decision in the matter of Walter Ward, P.T. Additionally, she moved that Ms. Marschean, Ms. Hahn, Ms. Truesdale and Ms. Currier attend the closed meeting because their presence in the closed meeting was deemed necessary and would aid the Board in its deliberations.

RECONVENE:

Having certified that the matters discussed in the preceding closed session met the requirements of §2.2-3712 of the Code, the Board re-convened in open session and announced its decision.

DECISION:

Upon a motion by Maureen Lyons, and duly seconded by Peggy Belmont, the Board made certain Findings of Fact and Conclusions of Law and voted to reinstate Mr. Ward's license. The Board further ordered that certain terms and conditions be placed on Mr. Ward's license.

VOTE:

The motion was passed with five ayes and one no.

ADJOURNMENT:

The panel adjourned at 11:20 p.m.

The decision shall be effective upon the entry by the Board of a written Order stating the findings, conclusions, and decisions of this formal hearing panel.

George Maihafer, PhD, Chair

Lisa R. Hahn, Executive Director

Date

Date

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